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CONFIDENTIAL.

DEPARTMENT OF THE INTERIOR, CANADA.

OTTAWA, 29th June, 1877.

MY DEAR MR. SMITH,

Some questions of difference having arisen between the Hudson's Bay Company and the Government of Canada with respect to the rights of the Company in the Fertile Belt, under the Deed of Surrender, and the various Acts of Parliament of Canada affecting the lands to which the Company are entitled, I think it would be well, in order to arrive at a proper understanding, to state fully and frankly my views upon the whole question.

1. In order to make more clear the mutual rights and obligations of the Canadian Government and the Hudson's Bay Company, it will be necessary to revert to the terms and conditions of the Deed of Surrender.

2. On the 9th November, 1869, the Company made a formal surrender of their claims to Rupert's Land and the North West Territories to the British Government, with a view to transferring these territories to the Government of Canada.

3. The principal provisions of the Deed are, that the Company are to retain all the posts or stations now actually possessed or occupied by them, or their officers or agents, whether in Rupert's Land or any other part of British North America, and may within twelve months after the acceptance of the said Surrender, select a block of land adjoining each of their posts or stations, within any part of British North America not comprised in Canada or British Columbia, in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers (which list was annexed in a Schedule); and that the actual survey is to be proceeded with, with all convenient speed.

4. I might here observe that in the letter of Sir FREDERICK ROGERS, of the 9th March, 1869, and also in the Memorandum of Agreement, of the 2nd of the same month, between Sir STAFFORD H. NORTHCOTE, on the one hand, and Sir GEORGE E. CARTIER and the Hon. WILLIAM MACDOUGALL on the other, it was stated that the aggregate extent of the blocks the Company were at liberty to select in the vicinity of their posts and stations was not to exceed 50,000 acres. No particular extent of territory is mentioned in the Deed of Surrender. The reason is obvious. The Company had in the meantime, except as to the Red River Territory, substituted a Schedule setting forth the quantity of land required at each post, so that it was no longer necessary to mention the aggregate area. The total area thus selected was 45,160 acres.

5. As to the extent of territory which the Company might select in the Red River District, or what was called the Red River Territory, it was to be such as might be agreed upon between the Company and the Canadian Government. The Company had it in their power, therefore, to select in the Red River Country an area of 4,840 acres, subject to the approval of the Canadian Ministers. They ultimately agreed on the selection of three blocks of 500 acres each, one at Upper Fort Garry, one at Lower Fort Garry, and one at White Horse Plains. This made the total area the Company had selected 46,660 acres, or 3,340 acres less than the maximum they might have claimed had they chosen to put them in the Schedule which accompanied the Deed, or had they inserted therein the reserved list of the Red River District. When the Company made a formal application for three blocks of 500 acres each, this part of the agreement between the Company and the Government was in my opinion closed, and it was not open to them to supplement the application by further demands.

6. The Company in June, 1872, applied for 3,340 acres more, so as to make up the area about their posts to the maximum of 50,000. By an order in Council of the 8th July following they were allowed 640 acres at Rat Portage, 221 at Dunvegan, 280 at Portage-la-Prairie, 140 at Fort Alexander, and 140 at Fort Francis. The 1280 acres which were applied for at White Mud River and Lake Manitoba were not granted to the Company, as the lands were already found to be settled upon. The 640 acres applied for at Peace River, were withheld until enquiry could be made as to whether a post was established at that point at the date of the Surrender. So that the Company have received in all 48,080 acres, being 1,420 more than they were strictly entitled to by the terms and conditions of the Deed of Surrender.

7. The Company still claim 1,920 acres at the hands of the Government, and if it can be shown that the lands around any post which had been extensively used by the Company were accidentally omitted from the Schedule which accompanied the Deed, and which indicates the extent of the Company's claims at each particular post, the Government may not be disposed to stand upon their extreme rights, if other questions relating to the allotment of the Company's lands can be settled in a manner at once consistent with the rights of the Company and the interests of the public.

8. By the 5th Article of the Deed of Surrender, the Company have a right to select an area not to exceed one-twentieth in any Township or District, within the Fertile Belt in which the lands are set out for settlement. The blocks so granted to the Company were to be determined by lot, the Company were to bear a ratable share of the expenses of survey, and they had the power of deferring the right to claim one-twentieth for a period not exceeding ten years from the time the land was set out for settlement; but in that case their selection was to be confined to the land remaining unsettled or unsold at the time they declared their intention to make the selection, nor was it in their power, if at the time they thus selected there did not remain in the Township or District one-twentieth of the land unsold or unoccupied, to supplement what was wanting by obtaining lands elsewhere. Their loss in this particular was absolute.

9. The obvious policy of the Company was to put it out of the power of the Government of Canada to compel them to take their one-twentieth *en bloc*. Clearly enough, they desired to have their lands distributed throughout the entire country, so that the progress of settlement, and the general improvement consequent thereon, might materially increase the value of the property allotted them.

10. The Fertile Belt is described as being bounded on the west by the Rocky Mountains; on the north, by the northern branch of the Saskatchewan River; on the east, by the Lake of the Woods, Lake Winnipeg and the waters connecting them; and on the south, by the United States Boundary.

11. The Government of Canada bound themselves to confirm all titles to land conferred by the Company up to the 8th March, 1869.

12. By the 14th Article of the Deed of Surrender, the Company were relieved from all responsibility for any payment made to the Indians in order to obtain from them the surrender of the lands required for purposes of settlement, and they acquired the power of invoking the action of the Imperial Government in conjunction with the Government of Canada, in treating with the Indians for the extinguishment of their title, and in fixing the extent of their reserves.

13. One of the claims which you have put forward on behalf of the Company is that the lands reserved for the Indians shall be considered lands set out for settlement, and for which the Hudson's Bay Company shall receive an equivalent of one-twentieth. From this claim I entirely dissent. I regard it as in direct contravention of the 14th Article of the Deed of Surrender, and I think this view is sustained by the correspondence which took place in October, 1868, between the EARL OF KIMBERLEY, Governor of the Hudson's Bay Company, and the Right Hon. SIR CHARLES ADDERLEY. LORD KIMBERLEY then proposed that Canada should pay the Hudson's Bay Company one shilling an acre for lands set out for settlement, and that lands for Churches, Roads, Schools and Indian Reserves, should be lands for which the Company should be entitled to no compensation while they continued as such reserves. SIR CHARLES ADDERLEY, however, replied that "such lands as Her Majesty's Government shall deem necessary to be set out for the use of the native Indian population, shall be reserved altogether from this arrangement, and the Company shall not be entitled to the payment of any share of receipts or any royalty therefrom, or any right of selection in respect thereof under previous articles, unless for such part, if any, of those lands as may be appropriated with the consent of the Crown to any other purpose than that of the benefit of the Indian natives."

14. The lands reserved for the Indians are lands which belong to them. The rule is a long established and well recognised one, that the property of the soil is originally in the Indian tribes who possessed it, and that the lands which are reserved for them under treaty regulations are lands belonging to the Indians over which the Government exercise no control, except as guardians when such lands come to be set apart for settlement, or sold, as they sometimes are, they are disposed of for the exclusive benefit of the band for whom they have been reserved. It is impossible for the Government to recognise any right on the part of the Hudson's Bay Company to share in such lands.

15. The lands which are, or may be surveyed and set out for settlement are lands in which the Indian title has been extinguished, and which, by that extinguishment, have become the property of the Crown.

16. I observe that in your letter to this department of you have stated it as your opinion that the Hudson's Bay Company are entitled to one-twentieth of all the lands settled upon without the authority of the Company before the Territory came into possession of the Government of Canada. The Government,

however, cannot admit this view of the rights of the Company. By Article 5 of the Deed of Surrender, the Company have right to claim one-twentieth of the lands set out for settlement. This provision must be regarded as either prospective or retrospective in its character, and the Hudson's Bay Company cannot claim for it a retrospective construction with respect to lands settled upon without their consent, and a prospective construction with regard to those lands which were settled upon by their authority. If they are to have one-twentieth of the lands set out for settlement within the Fertile Belt, and the Article is to be regarded as retrospective in its operation so far as lands settled upon prior to the Deed of Surrender are concerned, it is quite clear that lands occupied with the consent of the Company are lands to be deducted from the one-twentieth to which they are entitled under the Deed of Surrender. If this be the construction the Company are disposed to put upon the 5th Article, I presume the Government will not be disposed to make any objection.

17. The Company also contend that in striking the one-twentieth of lands to which they are entitled, the period at which the precise situation of the unsold or unoccupied lands should be taken, should be the 8th March, 1869, and not the 3rd June, 1870. It is impossible that the period mentioned by the Company can be the one taken into account in determining the precise situation of the unsold or unoccupied lands as the arrangement between them and the Government was then simply an executory one. The country was still under their authority until it was formally surrendered to the Crown on the 9th November following, and in no case could an earlier date than this be taken.

18. When the lands in the Red River Territory were first surveyed the rectangular system of surveys was extended to within two miles of the Red and Assiniboine Rivers (the Settlement Belt being supposed to extend that far), and the Hudson's Bay Company received their one-twentieth of the lands within the whole territory surveyed and set out for settlement. The Government were not aware at the time that the settlers along these rivers had, under the authority of the Company, acquired a certain right of property in the outer two miles, known as the "Hay Privilege," and which rendered it impossible, with due respect to that right, that the land over which the Privilege extended, could be beneficially used by any person who might acquire the fee in the same. It became necessary, therefore, to make some alteration in the surveys which were first made, and to include the outer two miles in the Settlement Belt along the two rivers.

* 19. The Company have been asked to surrender to the Crown the lands which were patented to them within these limits, and through you they have consented to do so, upon condition that they may be allowed to select lands in lieu thereof elsewhere. I am of opinion these were lands to which the Company had no legal right under the Deed of Surrender, and to which no right would have been recognised had the facts been known at the time the surveys were actually made, and it seems to me that the Company ought, in good faith, to surrender these lands to the Crown unconditionally, with a view to their being assigned to the occupants, in fulfilment of the 10th Article of the Deed of Surrender.

20. The Government of Canada are required to confirm all titles to property occupied with the authority of the Company at the date of the Surrender; and it would be indeed strange if, after having commuted the Hay Privilege by the grant of a certain tract of land over which the privilege extended, after having confirmed the right of property granted by the Company, the Government should next be called upon to allow

the Company an equivalent of one-twentieth of the lands so confirmed. On the contrary, the Government might reasonably have contended that the unoccupied lands over which this Privilege extended, should be deducted from the one-twentieth to which the Company were entitled under the Deed. If, in the opinion of the Company, a larger area was given in commutation of this right than ought to have been given, such a contention is fairly arguable ; but it is certainly a very different thing to assume that the Hay Privilege is one that ought to have been wholly disregarded, which the Company do if they insist upon obtaining an area equal to one-twentieth of the outer two miles.

21. With reference to your contention that where lands which fall to the Company by the allotment made according to the provisions of the Dominion Lands Act are found to be settled upon, and the Company forego their right to them, they are at liberty to select to an equal extent in lieu thereof, not only from lands within the Township or District, but anywhere within the Settlement Belt, I may say it is one to which the Government cannot give their assent. The restriction in the particular contained in the Act of Parliament is the same in principle as that contained in the original Deed of Surrender, where the Company delay accepting the lands allotted to them.

22. It is the interest of the Hudson's Bay Company, as much as it is the interest of the Government, that people shall not be discouraged from going into the country and selling, even in advance of the surveys. The value of the Company's lands, in a large measure, depends upon the settlement of the country, and the few settlers who may be found in any Township or District when it comes to be surveyed or set out for settlement, add largely to the value of the Company's property, and but very little to their risks. But the Company are not deprived of a section allotted to them when a settler is found upon it. They have the option of foregoing their right to it, and of selecting an equal extent of unoccupied land in the same Township, but their right of property, if they insist upon it, still remains. It is to be hoped, however, that the Company will not undertake to dispossess a settler who is innocently in possession of lands falling to them, without granting him adequate compensation for his improvements. In the province of Ontario, the law expressly provides that any person who is innocently in possession of lands which may subsequently prove to be the property of another shall not be ejected without fair compensation for the improvements he may have made ; but the Government did not suppose, nor did they now suppose that such legislation will be necessary in order to protect settlers from harsh treatment by the Hudson's Bay Company. The legislation complained of presents the simpler solution of permitting the Company to select other lands in the same Township.

23. There may be a few cases in which the lands to be chosen from in a Township, under such circumstances, will prove inferior to those the Company will be called on to abandon, if they consent to leave the settler in undisturbed possession ; but the advantages the Company are certain to gain by such settlement, will so far exceed any loss they may occasionally sustain, that they ought to have no hesitation in accepting the risk. It is by the labor and capital of the settlers that the Company expect to have their lands enhanced in value. The settler derives no corresponding advantage from the Company.

24. There is no injustice done the Company by confining them in their choice to other unoccupied lands in the Township in which the lands are situated that they consent to abandon. This is but maintaining the policy favored by the Company themselves in the Deed of Surrender, by preserving the distribution of their one-twentieth evenly throughout the entire country set out for settlement.

25. If the Company were at liberty to select lands wherever they pleased throughout the Fertile Belt, in lieu of those falling to them, but which might be found settled upon, there would be nothing to prevent them choosing lands reserved for village sites, town plots, or country seats, lands situated at the head of navigation upon rivers, or for other reasons having an exceptional value ten times greater than those which they had abandoned. With the superior knowledge possessed by the Company, through their agents and factors, to permit them to choose lands at any place within the Fertile Belt, would be to enormously increase the value of their possessions in the north-west beyond what was contemplated in the Deed of Surrender.

26. You have applied to the Department on behalf of the Company for permission to purchase lands situated at Westbourne, Portage-la-Prairie, St. Francois Xavier, Oak Point, and other places in Manitoba, to the extent of 2,815 acres. I observe you say they are lands which have been for some time in the possession of the Company, and have been used by them for agricultural purposes. The Government paid the Company £300,000 sterling, for the extinguishment of their claims, and for the surrender of all the country other than those portions of the Territory which have been reserved under the terms and conditions of the Deed of Surrender. It may, therefore, be very fairly presumed that the Company were compensated for any claims they may have to their lands. If, however, the Company consents to receive those lands as a portion of the one-twentieth falling to them, but found settled upon in the fractional Townships or in the Settlement Belt, no objections will be offered to their retaining them. But this concession is not to be regarded as an intention on the part of the Government to permit the Company in any other instance as a matter of right, to select lands outside the Township in which the lands settled upon are situated.

27. There are other matters which I observe have been referred to, but they are of minor importance, and I need not discuss them at present.

28. The Government will be glad, if you are authorised by the Company to act on their behalf, and at an early day, to close all unsettled matters in accordance, as near as may be, with the various provisions of the Dominion Lands Act, which were made to give practical effect to the Deed of Surrender.

I am, my dear Mr. Smith,

Your obedient Servant,

(Signed) DAVID MILLS.

THE HON. D. A. SMITH, M.P.,
COMMISSIONER, &c.,
HUDSON'S BAY COMPANY,
MONTREAL.

NOTE OF THE CONTENTS OF A LETTER FROM MR. MILLS,
June 29th, 1877.

REMARKS

In paragraphs 1—7 reference is made to Deed of Surrender in connection with the blocks of land around the posts.

The total area selected at the time the Deed was arranged was 46,660, or 3,340 less than the quantity to which the Company had a right to take.

Since then, upon Mr. Smith's application, the Government have allowed 1,420 acres to various stations, and as regards the remainder (1,920 acres) the Government state that they are not disposed to stand upon their extreme rights, if other questions relating to the allotment of the Company's lands can be settled in a manner at once consistent with the rights of the Company and the interests of the public.

In paragraphs 8—10 Mr. Mills quotes the terms of the Deed of Surrender regarding the Company's right to select one-twentieth of the lands in the Fertile Belt, and after referring to the clause under which the Company could defer the exercise of their right of selecting land for ten years, he points out that the selection when made must be confined to the land remaining unsold, and argues that if a twentieth is not left in any particular Township the Company could not make up the quantity from another Township.

Mr. Mills, in paragraphs 11—15, maintains that the lands which are reserved for Indians' under treaty regulations, are lands belonging to the Indians, and the Government cannot recognise the right of the Company to share in such lands. He refers to the 14th Article of Deed of Surrender and some correspondence with the Company in 1868, to support his view.

In paragraph 16, Mr. Mills states that the Government cannot admit the right of the Company to claim one-twentieth of the lands settled upon, without the authority of the Company before the territory came into possession of the Government of Canada; and in paragraph 17, he contends that the period at which the precise situation of the unsold or unoccupied lands should be taken, should be the 3rd of June, 1870, and not the 8th of March, 1869, as fixed by the Deed of Surrender.

He maintains that the authority of the Government over the country was not established till June, 1870.

By the terms of the Deed the Company were bound to make their selections of land around the posts within twelve months of the Surrender (Nov, 1869) Mr Smith's application was not made till June, 1872.

The terms of the Deed of Surrender referred to were superseded by the Dominion Lands Act, under which the Company are entitled to certain sections and quarter-sections in each and every Township in the Fertile Belt.

The Dominion Lands Act makes no provision for Indian reserves

This Article relieves the Company from all responsibility in respect of the claims of the Indians to compensation for lands

The negotiation under this correspondence failed

The Company's arrangement with the Imperial Government was to the effect that all titles to land up to the 8th of March, 1869, conferred by the Company are to be confirmed

By that time the Canadian Government had sent surveyors to Red River. The rebellion followed and delayed the transfer. Meanwhile, land was taken possession of, and the Company are asked to give up their share of it.

In paragraphs 18—20, explanations are given regarding a change in the system of survey in Red River Settlement, in consequence of the rights of parties in the Settlement Belt. Under the first survey the Company obtained their lands, and they are now asked to surrender them unconditionally, with a view to their being made over to the occupants.

REMARKS

Mr Smith has offered to give up these lands upon condition that the Company should be allowed to select lands in lieu thereof elsewhere.

In paragraphs 21—25, Mr. Mills refers to the question of the right of the Company to select land in *any* Township, in lieu of their own lots when found to be settled on, and contends that the restriction in this particular, contained in the Act, is the same in principle as that contained in the Deed of Surrender, when the Company delay accepting the lands allotted to them.

He goes outside the Act to shew its intention.

The Company can, in reply, allude to the withdrawal from the Act of the words "*in the same Township*," after "from any lands then unoccupied."

He admits that the Company have the *option* of foregoing their right to a particular section, and expresses a hope that the Company will not undertake to dispossess a settler who is innocently in possession of lands falling to them, without granting him adequate compensation for his improvements.

If allowed to select land *anywhere*, the Company would be placed in possession of lands of greater value than what was contemplated in the Deed of Surrender.

Paragraphs 26—28 refer to the Company's application to purchase 2815 acres of land in Manitoba, which had previously been used for agricultural purposes.

Mr. Mills offers, on the part of the Government, to exchange these lands for others claimed by the Company, in fractional Townships in Settlement Belt.

SCHEDULE (C).

The Governor and Company of Adventurers of England trading into Hudson's Bay to
HER MAJESTY QUEEN VICTORIA.

DEED OF SURRENDER.

To all to whom these Presents shall come unto, or concern, the Company of Adventurers of England, trading into Hudson's Bay, send greeting.

WHEREAS the said Governor and the Company were established and incorporated by their said name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," by Letters Patent granted by His late Majesty King Charles the Second in the twenty-second year of his reign, whereby His said Majesty granted unto the said Company and their successors the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks, and sounds in whatsoever latitude they should be, that lay within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid, that were not already actually possessed by, or granted to, any of His Majesty's subjects, or possessed by the subjects of any other Christian Prince or State, and that the said land should be from thenceforth reckoned and reputed as one of His Majesty's Plantations or Colonies in America called Rupert's Land, and whereby his said Majesty made and constituted the said Governor and Company and their successors the absolute Lords and proprietors of the same territory, limits, and places aforesaid, and of all other the premises saving the faith, allegiance, and sovereign dominion due to His said Majesty, his heirs and successors for the same, and granted to the said Governor and Company and their successors, such rights of Government and other rights, privileges, and liberties, franchises, powers, and authorities in Rupert's Land as therein expressed. And whereas ever since the date of the said Letters Patent, the said Governor and Company have exercised and enjoyed the sole right thereby granted of such trade and commerce as therein mentioned, and have exercised and enjoyed other rights, privileges, liberties, franchises, powers, and authorities thereby granted, and the said Governor and Company may have exercised or assumed rights of Government in other parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia. And whereas by the British North America Act, 1867, it is (amongst other things) enacted that it shall be lawful for Her present Majesty Queen Victoria, by and with the advice and consent of Her Majesty's most Honourable Privy Council, on Address from the Houses of Parliament of Canada, to admit Rupert's Land and the North Western Territory or either of them into the Union of the Dominion of Canada on such terms and conditions as are in the Address expressed, and as Her Majesty thinks fit to approve, subject to the provisions of the said Act. And whereas, by the Rupert's Land Act, 1868, it is enacted (amongst other things) that for the purposes of that Act the term "Rupert's Land," shall include the whole of the lands and territories held or claimed to be held by the said Governor and Company, and that it shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty, by any instrument under Her Sign-Manual and Signet, to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company :

provided, however, that such Surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from the Houses of the Parliament of Canada in pursuance of the 146th Section of the British North America Act, 1867, and that upon the acceptance by Her Majesty of such Surrender, all rights of Government and proprietary rights, and all other privileges, liberties, franchises, powers, and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished, provided that nothing in the said Act contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere trade and commerce. And whereas Her said Majesty Queen Victoria and the said Governor and Company have agreed to terms and conditions upon which the said Governor and Company shall surrender to Her said Majesty, pursuant to the provisions in that behalf in the Rupert's Land Act, 1868 contained, all the rights of Government and other rights, privileges, liberties, franchise, powers, and authorities, and all the lands and territories (except and subject as in the said terms and conditions expressed or mentioned) granted or purported to be granted by the said Letters Patent, and also all similar rights which have been exercised or assumed by the said Governor and Company in any parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia, in order and to the intent that, after such surrender has been effected and accepted under the provisions of the last-mentioned Act, the said Rupert's Land may be admitted into the Union of the Dominion of Canada, pursuant to the hereinbefore-mentioned Acts or one of them. And whereas the said terms and conditions on which it has been agreed that the said Surrender is to be made by the said Governor and Company (who are in the following Articles designated as the Company) to Her said Majesty are as follows, that is to say :—

1. The Canadian Government shall pay to the Company the sum of £300,000 sterling when Rupert's Land is transferred to the Dominion of Canada.
2. The Company to retain all the posts or stations now actually possessed and occupied by them or their officers or agents (whether in Rupert's Land or any other part of British North America), and may within twelve months after the acceptance of the said Surrender select a block of land adjoining each of their posts or stations within any part of British North America not comprised in Canada and British Columbia in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the annexed Schedule. The actual survey is to be proceeded with, with all convenient speed.
3. The size of each block is not to exceed in the Red River Territory an amount to be agreed upon between the Company and the Governor of Canada in Council.
4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, and of which the frontage shall not be more than half the depth.
5. The Company may, at any time within fifty years after such acceptance of the said Surrender, claim in any Township or District within the Fertile Belt in which land is set out for settlements, grants of land not exceeding one-twentieth part of the land so

set out; the blocks so granted to be determined by lot, and the Company to pay a ratable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of their right of claiming their proportion of each Township or district for not more than ten years after it is set out, but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

6. For the purpose of the last Article the Fertile Belt is to be bounded as follows:—On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan River; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

7. If any Township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such Township, which, for the purpose of this Article, shall not extend more than five miles inward from the river, giving to the Canadian Dominion an equal quantity of the portion of land coming to them of Townships established on the southern bank of the said river.

8. In laying out any public roads, canals, or public works, through any block of land reserved to the Company, the Canadian Government may take without compensation such land as is necessary for the purpose, not exceeding one twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, the said Government shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause, shall be appropriated for public purposes.

10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company, are to be confirmed.

11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity, and no exceptional tax is to be placed on the Company's land, trade, or servants, nor any import duty on goods introduced by the said Company previously to such acceptance of the said Surrender.

12. Canada is to take over the materials of the electric telegraph at cost price; such price including transport, but not including interest for money, and subject to a deduction of ascertained deterioration.

13. The Company's claim to land under an agreement of Messrs. Vankoughnet and Hopkins is to be withdrawn.

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.

And whereas the Surrender hereinafter contained is intended to be made in pursuance of the agreement, and upon the terms and conditions hereinbefore stated.

Now know ye, and these Presents witness, that, in pursuance of the powers and provisions of the Rupert's Land Act, 1868, and on the terms and conditions aforesaid, and also on condition of this Surrender being accepted pursuant to the provisions of that Act, the said Governor and Company do hereby surrender to the Queen's Most Gracious Majesty, all the rights of Government, and other rights, privileges, liberties, franchises, powers, and authorities, granted or purported to be granted to the said Governor and Company by the said recited Letters Patent of His late Majesty King Charles the Second; and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert's Land or of Canada, or of British Columbia, and all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent. In witness whereof, the Governor and Company of Adventurers of England trading into Hudson's Bay, have hereunto caused their Common Seal to be affixed, the nineteenth day of November, one thousand eight hundred and sixty-nine.

"Extract from the Dominion Lands Act."

DISPOSAL OF THE DOMINION LANDS.

LANDS RESERVED BY THE HUDSON'S BAY COMPANY.

Whereas by article five of the terms and conditions in the Deed of Surrender from the Hudson's Bay Company to the Crown, the said Company is entitled to one-twentieth of the land surveyed into townships in a certain portion of the territory surrendered, described and designated as the "Fertile Belt:"

And whereas by the terms of the said deed, the right to claim the said one-twentieth is extended over the period of fifty years, and it is provided that the lands comprising the same shall be determined by lot; and whereas the said Company and the Government of the Dominion have mutually agreed that with a view to an equitable distribution throughout the territory described, of the said one-twentieth of the lands, and in order further to simplify the setting apart thereof, certain sections or parts of section, alike in numbers and position in each township throughout the said territory, shall, as the townships are surveyed, be set apart and designated to meet and cover such one-twentieth;

And whereas it is found by computation that the said one-twentieth will be exactly met, by allowing in every fifth township two whole sections of six hundred and forty acres each, and in all other townships one section and three quarters of a section each, therefore—

In every fifth township in the said territory ; that is to say : in those Townships numbered five, ten, fifteen, twenty, twenty-five, thirty, thirty-five, forty, forty-five, fifty, and so on in regular succession northerly from the international boundary, the whole of sections numbers eight and twenty-six, and in each and every of the other Townships of the whole of section number eight and the south half and north-west quarter of section twenty-six (except in the cases hereinafter provided for) shall be known and designated as the lands of the said Company.

Provided that the Company's one-twentieth of the lands in fractional Townships shall be satisfied out of one, or other, or both, as the case may be, of the sections numbers eight and twenty-six as above, in such fractional Townships, the allotment thereof to be effected by the Minister of the Interior and the said Company, or some person duly authorized by them respectively.

Provided, further, that on the survey of a Township being effected, should the sections so allotted, or any of them, or any portion of them, be found to have been *bonâ fide* settled on under the authority of any Order in Council, or of this Act, then if the Company forego their right to the sections settled upon as aforesaid, or any one or more of such sections, they shall have the right to select a quantity of land equal to that so settled on, and in lieu thereof, from any lands then unoccupied.

Provided, also, as regards the sections and parts of sections as mentioned in clause seventeen, that where the same may be situate in any Township withdrawn from settlement and sale, and held as timber lands under the provisions hereinafter contained, the same shall form no part of the timber limit or limits included in such Townships, but shall be held to be the property of the Company.

Provided, further, that one-twentieth of the revenue derived from timber limits which may be granted in unsurveyed territory within the Fertile Belt, as hereinafter provided, shall be annually, so long as the Townships composed in the same remain unsurveyed, paid and accounted for to the Company, such one-twentieth to cease or to be diminished in proportion as the Townships comprised in such limits, or any of them, may be surveyed, in which event the Company shall receive their one-twentieth interest in the lands in such Townships in sections eight and twenty-six as hereinbefore enacted : Provided, nevertheless, that on such sections being surveyed as aforesaid, should the same or either of them prove to have been denuded of timber by the lessee, to the extent of one-half or more, then, in such case the Company shall not be bound to accept such section or sections so denuded, and shall have the right to select a section or sections to an equal extent in lieu thereof from any unoccupied lands in such Township.

As Townships are surveyed and the respective surveys thereof confirmed, or as Townships or parts of Townships are set apart and reserved from sale as timber lands, the Governor of the said Company shall be duly notified thereof by the Surveyor General, and thereupon this Act shall operate to pass the title in fee simple in the sections or three-quarter parts of sections to which the Company will be entitled under clause seventeen, as aforesaid, and to vest the same in the said Company, without requiring a patent to issue for such lands ; and as regards the lands set apart by lot, and those selected to satisfy the one-twentieth in Townships other than the above, as provided in clauses eighteen and nineteen, returns thereof shall be made in due course by the Local Agent or Agents to the Dominion Lands Office, and patents shall issue for the same accordingly.

MONTREAL, 22nd December, 1876.

DEAR SIR,

I have considered the question submitted by you (arising under sec. 19 Dominion Lands Act, 35 Vic., ch. 23) as to the right of the Company in respect of the selection of lands to replace those that have been *bonâ fide* settled on under the authority of any order in council, or of the said Act, in case the Company should forego their right to the sections so settled upon or any one or more of such sections.

The Deed of Surrender (Article 5) provided as one of the terms and conditions of the Surrender that the Company might, at any time within fifty years after the acceptance of the Surrender, claim in any Township or District within the Fertile Belt in which land is set out for settlement grants of land not exceeding one-twentieth part of the land so set out, the blocks so granted to be determined by lot with the restriction that the Company might defer the exercise of their right of claiming their proportion of each Township or District for not more than ten years after it should be set out, but that their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it. By the Dominion Lands Act, sections 16 and 17, it is declared that the Company and the Government of the Dominion have mutually agreed that with a view to an equitable distribution throughout the Fertile Belt of the said one-twentieth of the lands, and in order further to simplify the setting apart thereof, certain sections or part of sections alike in numbers and position in each Township throughout the said Territory should, as the Townships are surveyed, be set apart and designated to meet and cover such one-twentieth part. By the same section, the sections and part of sections forming such one-twentieth are specified.

It would seem that Article 5 of the Deed of Surrender has been entirely superseded by the legislation referred to, which provides an entirely different system for ascertaining of what lands the Company's one-twentieth is to consist.

The language of section 19 of the Act, which is very general in its terms, provides that where any sections allotted to the Company or any portions of them shall be found to be *bonâ fide* settled on, under the authority of any order in council, or of the said Act, then if the Company forego their rights to the sections settled upon or any one or more of such sections, they shall have a right to select a quantity of land equal to that so settled on, and in lieu thereof, from any of the lands then unoccupied. There is nothing in this section to imply that the lands so selected must be within the same Township, and I am inclined to think that a fair reading of the section would lead to the conclusion that in cases where the Company have been deprived of their allotted sections, or parts of sections, in any Township by the Act of the Government, or under the sanction of law, the Company have the right to replace them, by selecting the same quantity of land from any unoccupied lands in the Fertile Belt. This view is very much strengthened by reference to section 20, which provides that in Townships set apart as timber lands, the Company shall (where the sections have been denuded of timber to a specified extent), be restricted in their selection of lands (to replace the same) to a section or sections of equal extent from any unoccupied lands within the Township. Had Parliament intended to make the same restriction in cases of lands settled upon, the same restricting words would naturally have been used. The reason for the difference between the provisions in section 19 and those of section 20, appears to be that, in the case of timber lands, one-twentieth of the revenue is to be paid to the Company, a very appreciable consideration for restricting the selection (referred to in section 20) to unoccupied lands within the Township.

In reference to the alterations which were made in the Act as it was introduced into Parliament, the words (in section 19) restricting the selection of the Company to unclaimed or unoccupied lands in the same Township having been struck out, I would remark that in case of the matter being submitted to any tribunal or authority for settlement, it might be difficult for the Company to go behind the words of the Statute. In the ordinary interpretation of Statutes, I have no doubt such a course would be impracticable. It is not, however, in the present case, unreasonable to regard the sections of the Act relating to lands reserved by the Company, as simply containing a legislative sanction of an agreement entered into between the Government and the Company, modifying the terms of the Deed of Surrender. In this view, it would, perhaps, be only fair that the Government should make no objection to evidence being adduced (or an admission being given, binding on the Government) establishing what variations were made from the agreement as submitted to Parliament, and as finally passed and made law, with the consent of the Company. Should such evidence be permitted, or such an admission be given, the interpretation sought to be put upon section 19 by the Company, would, I think, be clearly established, in so far at all events, as doing away with the restriction of the selection by the Company to the limits of the Township is concerned.

In given these impressions as to the question submitted, I do not wish to be understood as expressing a positive opinion that, taking the Statute as it stands, the pretensions of the Company would be sure to be maintained, for, of course the interpretation contended for by the Company might lead to a different result from that contemplated by Article 5 of the Deed of Surrender, and by the second Preamble to section 17 of the Act. Should, however, such a result be possible, it might be urged that it had been brought about solely by the Act of the Government or by the operation of the Statute, and not by any act or default on the part of the Company.

Yours very truly,

(Signed) THOS. W. RITCHIE.

* Hon. D. A. SMITH.

